HIGH COURT OF UTTARANCHAL AT NAINITAL

C-482 NO. 1018 OF 2006

1. Jitendra Singh Neta, S/o Shri Pat Ram,
2. Pat Ram ,S/o Shri Kuda,
3. Smt. Jagwati, W/o Shri Pat Ram,
4. Rishipal, S/o Shri Pat Ram,
5. Satpal, S/o Shri Pat Ram,
6. Surendra, S/o Shri Pat Ram,
7. Jamal, S/o Shri Pat Ram,
8. Smt. Mahendri, W/o Shri Rishipal,
9. Smt. Bilkesh, W/o Shri Satpal,
10. Smt. Rajbiri, W/o Shri Jagmal Singh,

All R/o Village Farashpur, Tehsil Amroha,
District – J.P. Nagar (U.P.)

.....Petitioners/ Applicant.

Vs.

1. State of Uttaranchal.
2. Smt. Kiran, W/o Shri Jitendra Singh Neta, D/o Shri Kirti Singh, at present residing at C- 1, Canal Colony, Near S.D. Girls Degree College, Roorkee, Tehsil Roorkee, District – Haridwar (Uttaranchal).

.....Respondents/ Opp. Parties.

Hon'ble Rajesh Tandon, J.

Heard Sri Raveendra Singh Bisht, counsel for the applicants and A.G.A. for the State.

2. By the present application filed under Section 482 of the Code of Criminal Procedure, the applicants have prayed for quashing the criminal proceedings arising

out of Complaint Case No. 2564 of 2006 Smt. Kiran Vs. Jitendra Singh Neta and others under Section 406 of the Indian Penal Code pending before the Judicial Magistrate, Roorkee, District- Haridwar. Further prayer has been made for staying further proceedings of Case No. 2564 of 2006 Smt. Kiran Vs. Jitendra Singh Neta and others under Section 406 of I.P.C. Pending before the Judicial Magistrate, Roorkee, District – Haridwar.

3. Briefly stated, applicant no. 1 and opposite party no. 2 were married on 20.05.2001, but due to some dispute, both started living separately since July, 2003.

4. After leaving the matrimonial house, the opposite party no. 2 filed a complaint against the applicant under Section 406 of the Indian Penal Code before the Judicial Magistrate, Roorkee, District-Haridwar alleging therein that the applicants are misappropriating her Stridhan. The case was registered as Case No. 2564 of 20076 *Smt. Kiran Vs. Jitendra Singh Neta and others.*

5. According to the applicants, some of them have preferred Criminal Revision against the summoning order passed by the Judicial Magistrate, Roorkee dated 08.04.2004 before the District and Sessions Judge, Haridwar, which has been registered as Criminal Revision No. 410 of 2004.

6. Submission of the applicants is that during the pendency of the above noted Criminal revision, a compromise arrived among the parties and both husband

and wife agreed to settle their disputes pending in various courts, subsequently, on 01.06.2006, the applicant no. 1 moved an application before the revisional Court stating therein that the revision filed by the revisionist be dismissed in view of the compromise arrived at between the parties.

7. Vide order-dated 06.06.2006, the District and Sessions Judge, Haridwar dismissed the revision in view of the application made by the applicant no. 1, however, the revisional court has maintained the summoning order passed by the trial Court.

8. Applicants have submitted that they were under impression that criminal revision as well as case pending against the applicants will be dismissed in view of the compromise and their appearance will not be required.

9. After receiving the original record from the revisional Court, the trial Court issued Non Bailable Warrant on 14.08.2006 and on 8th November, 2006 issued N.B.W. along with process under Section 82 of the Code of Criminal Procedure.

10. Applicants no. 1, 2 and 3 have already been acquitted from the charges framed under Section 498-A I.P.C. and 3/4 of the Dory Prohibition Act in view of the statements recorded by the respondent no. 2 and her father Shri Kirti Singh regarding compromise. The relevant portion of the said order is quoted:-

''इस प्रकार अभियोजन प्क्ष की ओर से प्रस्तुत साक्षी गण के साक्ष्य से यह बात स्पष्ट तौर पर निकलकर आती है कि प्रार्थीया श्रीमति किरण का विवाह अभियुक्त जितेन्द्र सिंह नेता के साथ हुआ था और कुछ समय बाद दहेज को लेकर पति पत्नी का आपस में मनमुटाव हो जाने के कारण किरण ने अपने मायके आकर न्यायालय के माध्यम से थाने पर रिपोर्ट लिखा दी थी, परन्तु अब उनका आपस में समझौता हो गया है तथा किरण का जितेन्द्र सिंह नेता से आपसी राजीनामा के आधार पर तलाक हो चुका है और स्वयं किरण के द्वारा तथा उसके पिता कीर्ति सिंह द्वारा अब इस वाद में काई कार्यवाही न किये जाने का कथन किया गया है। ऐसी स्थिति में पत्रावली पर उपलब्ध साक्ष्य तथा इस तथ्य को देखते हुये कि मामला पति पत्नी के बीच का है तथा अब उनका आपस में राजनामा हो गया है तथा तलाक हो चुका है, अभियुक्तगण को दोषसिद्ध करके दंडित किया जाना न्यायेाचित प्रतीत नहीं होता है, बल्कि हर दृष्टिकोण से अभियुक्तगण को दोषमुक्त किया जाना न्यायोचित प्रतीत होता है।

यद्यपि विभिन्न अभियोजन अभिलेखों की मौलिकता बचाव प्क्ष के विद्वान अधिवक्ता द्वारा स्वीकार की गयी है, परन्तु उपरोक्त परिस्थितियों में इससे अभियोजन पक्ष को कोई लाभ नहीं मिल सकता है।

इस प्रकार उपरोक्त की गयी सम्पूर्ण विवेचना एवं पत्रावली पर उपलब्ध साक्षीगण के इन बयानों को दृश्टि में रखते हुये कि प्क्षकारों का अपास में राजीनामा हो गया है तथा अब वादनी किरण व उसके परिवार वाले अभियुक्तगण के विरूद्ध कोई कार्यवाही नहीं चाहते हैं, अभियोजन पक्ष का केस संदेह से परे साबित नहीं माना जा सकता है और परिणाम स्वरूप

अभियुक्तगण जितेन्द्र सिंह नेता, पतराम और श्रीमति जगवती लगये गये आरोप अन्तर्गत धारा 498ए भा0दं0सं0 व धारा 3/4 दहेज प्रतिशेध अधिनियम से दोशमुक्त होने योग्य है।

आदे ा

अभियुक्तगण जितेन्द्र सिंह नेता, पतराम सिंह और श्रीमति जगवती को लगाये गये आरोप अन्तर्गत धरा 498 ए भा0दं0सं0 व धारा 3/4 दहेज प्रतिशेध अधिनियम से दोश मुक्त किया जाता है। अभियुक्तगण जमानत पर है उनके जमानत नामें एवं व्यक्तिगत बंधपत्र को निरस्त किया जाता है तथा जमानतियों को उनके दायित्व से मुक्त किया जाता है।''

11. On 30.05.2006, an application regarding comprise was preferred by the parties before the Family Judge, Roorkee in Case No. 140 of 2003 Smt. Kiran Vs. Jitendra Singh Neta under Section 125 of Cr.P.C.

12. Pursuant to compromise, the applicant no. 1 deposited Rs. 50,000/- as lumpsum maintenance in the court concerned and paid the balance amount of Rs. 16,000/-

13. Again on 30.05.2006, an application for compromise was preferred in Case No. 69 of 2004 Smt. Kiran V.s Jitendra Singh Neta under Section 13 of the Hindu Marriage Act. Respondent no. 2 and her father Shri Kirti Singh were examined as P.W. 1 and P.W. 2 and they accepted the compromise in their statements.

14. Counsel for the applicants has submitted that applicants no. 2 and 3 are very old and the applicants no. 4, 5 and 6 are serving in Indian Army and applicants no. 8 and 9 are living with them.

15. Counsel for the applicants has referred ***B.S. Joshi Vs. State of Haryana [2003 (2) E L C 728 (SC],*** where it has been observed as under :

> "In view of the above, discussion, we hold that the High Court in exercise of its inherent powers an quash criminal proceedings of FIR or complaint and Section 320 of the Code dopes not limit or affect the powers under Section 482 of the Code."

16. However, since the compromise as referred above was recorded in the court- below, I feel proper to remit the matter to the Magistrate concerned to decide the proceedings taking into consideration the compromise between the parties as well as on the basis of amended Section 265 A of the Code of Criminal Procedure instead of interfering under Section 482 of the Code of Criminal Procedure in view of ***Medchl Chemicals & Pharma (P) Ltd. Vs. Biological E. Ltd and others (2000) 3 SCC 269.***

17. The Magistrate concerned shall decide the case of the applicants in accordance with the compromise as well as judgment of ***B. S. Joshi*** (supra). Non- Bailable Warrant as well process under Section 82 of the Code of Criminal Procedure shall remain in abeyance.

18. However, since the applicant 2 and 3 are aged person and the applicants no. 4, 5 and 6 are serving in Indian Army and applicants no. 8 and 9 are living with them, and the case arises out of the complaint.

19. In view of the above, since the matter arises out of the complaint case, the applicants are directed to furnish personal bonds to the satisfaction of the Magistrate concerned for their regular appearance in the case.

20. In view of the aforesaid, petition filed under Section 482 of the Code of Criminal Procedure is disposed of.

(Rajesh Tandon, J.)

12.12.2006
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